

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,503

IN THE MATTER OF:

Served July 28, 2008

Application of KING SHUTTLE, LLC,)
for a Certificate of Authority --)
Irregular Route Operations)

Case No. AP-2008-073

Applicant seeks a certificate of authority to transport passengers in irregular route operations between points in the Metropolitan District. The application is unopposed.

The Compact, Title II, Article XI, Section 7(a), authorizes the Commission to issue a certificate of authority if it finds that the proposed transportation is consistent with the public interest and that the applicant is fit, willing, and able to perform the proposed transportation properly, conform to the provisions of the Compact, and conform to the rules, regulations, and requirements of the Commission. If an applicant does not make the required showing, the application must be denied under Section 7(b).

An applicant for a certificate of authority bears the burden of establishing financial fitness, operational fitness, and regulatory compliance fitness.¹ A determination of compliance fitness is prospective in nature.² The purpose of the inquiry is to protect the public from those whose conduct demonstrates an unwillingness to operate in accordance with regulatory requirements.³ Past violations do not necessarily preclude a grant of authority but permit the inference that violations will continue.⁴

This is applicant's second application for a certificate of authority. The first application was conditionally approved in Order No. 10,245, served January 22, 2007. The issuance of a certificate of authority was expressly made contingent on applicant filing additional documents and passing a vehicle inspection conducted by Commission staff. Applicant failed to satisfy the conditions for issuance of operating authority within the time allotted, thereby voiding the Commission's approval.⁵

¹ *In re Charles Burney Mainor, t/a Mainor's Bus Serv.*, No. AP-07-127, Order No. 10,933 (Nov. 27, 2007).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ See Order No. 10,245 (grant of authority void upon applicant's failure to timely satisfy conditions of issuance); Commission Regulation No. 66 (failure to comply with conditions of grant within 180 days voids approval).

Documents obtained from applicant and from MV Transportation, Inc., WMATC Carrier No. 764, indicate applicant began performing passenger transportation in the Metropolitan District under contract with MV in April of 2007 notwithstanding the lack of WMATC operating authority. Applicant's president, Sheldon R. Spivey, states that he mistakenly believed the application process had been completed when he received a copy of Order No. 10,245. Mr. Spivey further states that he did not realize his error until March of this year. He then filed this application on April 2. In the meantime, applicant continued performing the MV contract until mid-May when Commission staff informed MV that applicant had no WMATC authority.

When an applicant has a record of violations, the Commission considers the following factors in assessing the likelihood of future compliance: (1) the nature and extent of the violations, (2) any mitigating circumstances, (3) whether the violations were flagrant and persistent, (4) whether applicant has made sincere efforts to correct its past mistakes, and (5) whether applicant has demonstrated a willingness and ability to comport with the Compact and rules and regulations thereunder in the future.⁶

Operating without authority is a serious violation. Applicant's continued performance of the MV contract after applicant's president became aware applicant lacked the necessary operating authority makes those operations flagrant and persistent. We find no mitigating factors.

Mr. Spivey states that applicant has "made some critical changes in our organization to make sure mistakes like this never happen again." But no details are offered, and the alleged changes, if indeed there have been any, have proved less than successful in ensuring applicant's compliance with comparable regulatory requirements since this application was filed. Documents obtained from the Taxpayer Services Division of the Maryland Department of Assessments and Taxation indicate that applicant has yet to file its 2008 Maryland personal property return even though it was due April 15 of this year.⁷ This not only indicates a lack of compliance fitness,⁸ it renders applicant ineligible for a WMATC certificate of authority for applicant's failure to remain in good standing with its state of formation.⁹

⁶ Id.

⁷ Available at <http://sdatcert3.resiusa.org/ucc-charter/>.

⁸ See *In re EMK Servs. Inc.*, No. AP-05-05, Order No. 8921 at 3 (Aug. 19, 2005) (discussing same).

⁹ *In re U'nique Limo. & Transp. Servs., L.L.C.*, No. AP-08-020, Order No. 11,411 (June 13, 2008).

Under the circumstances, we are unable to say that applicant has sustained its burden of demonstrating regulatory compliance fitness.¹⁰

THEREFORE, IT IS ORDERED that the application of King Shuttle, LLC, for a certificate of authority, irregular route operations, is hereby denied without prejudice.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:

A handwritten signature in black ink, appearing to read 'William S. Morrow, Jr.', with a stylized, cursive script.

William S. Morrow, Jr.
Executive Director

¹⁰ See Order No. 8921 (denying application where applicant with history of violations failed to implement sufficient corrective procedures); *In re BLS Limo Group, Inc., & Bethany Limo. & Buses, Inc.*, No. AP-03-160, Order No. 7897 (Mar. 25, 2004) (denying application in part for prior unauthorized operations).